

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

TALECRIS BIOTHERAPEUTICS, INC. and
BAYER HEALTHCARE LLC.,

Plaintiffs,

v.

BAXTER INTERNATIONAL INC. and
BAXTER HEALTHCARE CORPORATION,

Defendants.

Civil Action No. 05-349-GMS

Jury Trial Demanded

BAXTER HEALTHCARE CORPORATION,

Counterclaimant,

v.

TALECRIS BIOTHERAPEUTICS, INC. and
BAYER HEALTHCARE LLC,

Counterdefendants.

BAXTER'S PROPOSED SPECIAL VERDICT FORM

We, the jury, unanimously find as follows:

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

TALECRIS BIOTHERAPEUTICS, INC. and)
BAYER HEALTHCARE LLC,)

Plaintiffs,)

v.)

BAXTER INTERNATIONAL INC. and)
BAXTER HEALTHCARE CORPORATION,)

Defendants.)

Civil Action No. 05-349-GMS

Jury Trial Demanded

BAXTER HEALTHCARE CORPORATION,)

Counterclaimant,)

v.)

TALECRIS BIOTHERAPEUTICS, INC. and)
BAYER HEALTHCARE LLC,)

Counterdefendants.)

BAXTER'S PROPOSED SPECIAL VERDICT FORM

We, the jury, unanimously find as follows:

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

TALECRIS BIOTHERAPEUTICS, INC. and)
BAYER HEALTHCARE LLC,)

Plaintiffs,)

v.)

BAXTER INTERNATIONAL INC. and)
BAXTER HEALTHCARE CORPORATION,)

Defendants.)

Civil Action No. 05-349-GMS

Jury Trial Demanded

BAXTER HEALTHCARE CORPORATION,)

Counterclaimant,)

v.)

TALECRIS BIOTHERAPEUTICS, INC. and)
BAYER HEALTHCARE LLC,)

Counterdefendants.)

BAXTER'S PROPOSED SPECIAL VERDICT FORM

We, the jury, unanimously find as follows:

1. PATENT INFRINGEMENT/NON-INFRINGEMENT

- (a) Has Talecris proven by a preponderance of the evidence that Baxter literally infringes Claim 1 of United States Patent No. 6,686,191?

YES, infringement _____

NO, no infringement _____

- (b) If you answered “no” to Question (a), proceed to Question 3. If you answered “yes” to Question (a) above, then proceed to answer the following question. Has Talecris proven by a preponderance of the evidence that Baxter literally infringes any of the following claims of the '191 patent?

YES, infringement

NO, no infringement

Claim 7 _____

Claim 8 _____

Claim 9 _____

Claim 10 _____

Claim 12 _____

Claim 15 _____

Claim 16 _____

Claim 17 _____

Claim 18 _____

Claim 19 _____

Claim 20 _____

- (c) If you answered “no” to Question (a), proceed to Question 3. If you answered “yes” to Question (a) above, then proceed to answer the following question. Has Talecris proven by a preponderance of the evidence that Baxter infringes by equivalents any of the following claims of the '191 patent?

YES, infringement

NO, no infringement

Claim 10 _____

Claim 12 _____

Claim 15 _____

Claim 16 _____

1. PATENT INFRINGEMENT/NON-INFRINGEMENT

- (a) Has Talecris proven by a preponderance of the evidence that Baxter literally infringes Claim 1 of United States Patent No. 6,686,191?

YES, infringement _____

NO, no infringement _____

- (b) If you answered “no” to Question (a), proceed to Question 3. If you answered “yes” to Question (a) above, then proceed to answer the following question. Has Talecris proven by a preponderance of the evidence that Baxter literally infringes any of the following claims of the '191 patent?

YES, infringement

NO, no infringement

Claim 7 _____

Claim 8 _____

Claim 9 _____

Claim 10 _____

Claim 12 _____

Claim 15 _____

Claim 16 _____

Claim 17 _____

Claim 18 _____

Claim 19 _____

Claim 20 _____

- (c) If you answered “no” to Question (a), proceed to Question 3. If you answered “yes” to Question (a) above, then proceed to answer the following question. Has Talecris proven by a preponderance of the evidence that Baxter infringes by equivalents any of the following claims of the '191 patent?

YES, infringement

NO, no infringement

Claim 10 _____

Claim 12 _____

Claim 15 _____

Claim 16 _____

1. PATENT INFRINGEMENT/NON-INFRINGEMENT

- (a) Has Talecris proven by a preponderance of the evidence that Baxter literally infringes Claim 1 of United States Patent No. 6,686,191?

YES, infringement _____

NO, no infringement _____

- (b) If you answered “no” to Question (a), proceed to Question 3. If you answered “yes” to Question (a) above, then proceed to answer the following question. Has Talecris proven by a preponderance of the evidence that Baxter literally infringes any of the following claims of the '191 patent?

YES, infringement

NO, no infringement

Claim 7 _____

Claim 8 _____

Claim 9 _____

Claim 10 _____

Claim 12 _____

Claim 15 _____

Claim 16 _____

Claim 17 _____

Claim 18 _____

Claim 19 _____

Claim 20 _____

- (c) If you answered “no” to Question (a), proceed to Question 3. If you answered “yes” to Question (a) above, then proceed to answer the following question. Has Talecris proven by a preponderance of the evidence that Baxter infringes by equivalents any of the following claims of the '191 patent?

YES, infringement

NO, no infringement

Claim 10 _____

Claim 12 _____

Claim 15 _____

Claim 16 _____

2. **WILLFUL INFRINGEMENT CLAIM**

Only answer question 2 if you find Baxter infringed at least Claim 1 of the '191 patent.

Question No. 2: Willful Infringement

Has Talecris proven by clear and convincing evidence that Baxter willfully infringed the '191 patent?

YES, willful infringement ____

NO, no willful infringement ____

2. WILLFUL INFRINGEMENT CLAIM

Only answer question 2 if you find Baxter infringed at least Claim 1 of the '191 patent.

Question No. 2: Willful Infringement

Has Talecris proven by clear and convincing evidence that Baxter willfully infringed the '191 patent?

YES, willful infringement ____

NO, no willful infringement ____

2. WILLFUL INFRINGEMENT CLAIM

Only answer question 2 if you find Baxter infringed at least Claim 1 of the '191 patent.

Question No. 2: Willful Infringement

Has Talecris proven by clear and convincing evidence that Baxter willfully infringed the '191 patent?

YES, willful infringement ____

NO, no willful infringement ____

3. INVALIDITY/VALIDITY

No matter how you answered questions 1 and 2, please answer the following questions regarding invalidity/validity.

A. Anticipation

Question No. 3(a)

Has Baxter proven by clear and convincing evidence that any asserted claim of the '191 patent is invalid because the claim is anticipated by the prior art? If so, what claims has Baxter proven are invalid on this basis?

	YES, invalid	NO, not invalid
Claim 1	_____	_____
Claim 7	_____	_____
Claim 8	_____	_____
Claim 9	_____	_____
Claim 10	_____	_____
Claim 12	_____	_____
Claim 15	_____	_____
Claim 16	_____	_____
Claim 17	_____	_____
Claim 18	_____	_____
Claim 19	_____	_____
Claim 20	_____	_____

Go on to the next question.

3. INVALIDITY/VALIDITY

No matter how you answered questions 1 and 2, please answer the following questions regarding invalidity/validity.

A. Anticipation

Question No. 3(a)

Has Baxter proven by clear and convincing evidence that any asserted claim of the '191 patent is invalid because the claim is anticipated by the prior art? If so, what claims has Baxter proven are invalid on this basis?

	YES, invalid	NO, not invalid
Claim 1	_____	_____
Claim 7	_____	_____
Claim 8	_____	_____
Claim 9	_____	_____
Claim 10	_____	_____
Claim 12	_____	_____
Claim 15	_____	_____
Claim 16	_____	_____
Claim 17	_____	_____
Claim 18	_____	_____
Claim 19	_____	_____
Claim 20	_____	_____

Go on to the next question.

3. INVALIDITY/VALIDITY

No matter how you answered questions 1 and 2, please answer the following questions regarding invalidity/validity.

A. Anticipation

Question No. 3(a)

Has Baxter proven by clear and convincing evidence that any asserted claim of the '191 patent is invalid because the claim is anticipated by the prior art? If so, what claims has Baxter proven are invalid on this basis?

	YES, invalid	NO, not invalid
Claim 1	_____	_____
Claim 7	_____	_____
Claim 8	_____	_____
Claim 9	_____	_____
Claim 10	_____	_____
Claim 12	_____	_____
Claim 15	_____	_____
Claim 16	_____	_____
Claim 17	_____	_____
Claim 18	_____	_____
Claim 19	_____	_____
Claim 20	_____	_____

Go on to the next question.

B. Obviousness

Question No. 3(b)

Has Baxter proven by clear and convincing evidence that any asserted claim of the '191 patent is invalid because the claim is obvious? If so, what claims has Baxter proven are invalid on this basis?

	YES, invalid	NO, not invalid
Claim 1	_____	_____
Claim 7	_____	_____
Claim 8	_____	_____
Claim 9	_____	_____
Claim 10	_____	_____
Claim 12	_____	_____
Claim 15	_____	_____
Claim 16	_____	_____
Claim 17	_____	_____
Claim 18	_____	_____
Claim 19	_____	_____
Claim 20	_____	_____

Go on to the next question.

B. Obviousness

Question No. 3(b)

Has Baxter proven by clear and convincing evidence that any asserted claim of the '191 patent is invalid because the claim is obvious? If so, what claims has Baxter proven are invalid on this basis?

	YES, invalid	NO, not invalid
Claim 1	_____	_____
Claim 7	_____	_____
Claim 8	_____	_____
Claim 9	_____	_____
Claim 10	_____	_____
Claim 12	_____	_____
Claim 15	_____	_____
Claim 16	_____	_____
Claim 17	_____	_____
Claim 18	_____	_____
Claim 19	_____	_____
Claim 20	_____	_____

Go on to the next question.

B. Obviousness

Question No. 3(b)

Has Baxter proven by clear and convincing evidence that any asserted claim of the '191 patent is invalid because the claim is obvious? If so, what claims has Baxter proven are invalid on this basis?

	YES, invalid	NO, not invalid
Claim 1	_____	_____
Claim 7	_____	_____
Claim 8	_____	_____
Claim 9	_____	_____
Claim 10	_____	_____
Claim 12	_____	_____
Claim 15	_____	_____
Claim 16	_____	_____
Claim 17	_____	_____
Claim 18	_____	_____
Claim 19	_____	_____
Claim 20	_____	_____

Go on to the next question.

C. Written Description

Question No. 3(c)

Has Baxter proven by clear and convincing evidence that any asserted claim of the '191 patent is invalid because the claim lacks written description? If so, what claims has Baxter proven are invalid on this basis?

	YES, invalid	NO, not invalid
Claim 1	_____	_____
Claim 7	_____	_____
Claim 8	_____	_____
Claim 9	_____	_____
Claim 10	_____	_____
Claim 12	_____	_____
Claim 15	_____	_____
Claim 16	_____	_____
Claim 17	_____	_____
Claim 18	_____	_____
Claim 19	_____	_____
Claim 20	_____	_____

Go on to the next question.

C. Written Description

Question No. 3(c)

Has Baxter proven by clear and convincing evidence that any asserted claim of the '191 patent is invalid because the claim lacks written description? If so, what claims has Baxter proven are invalid on this basis?

	YES, invalid	NO, not invalid
Claim 1	_____	_____
Claim 7	_____	_____
Claim 8	_____	_____
Claim 9	_____	_____
Claim 10	_____	_____
Claim 12	_____	_____
Claim 15	_____	_____
Claim 16	_____	_____
Claim 17	_____	_____
Claim 18	_____	_____
Claim 19	_____	_____
Claim 20	_____	_____

Go on to the next question.

C. Written Description

Question No. 3(c)

Has Baxter proven by clear and convincing evidence that any asserted claim of the '191 patent is invalid because the claim lacks written description? If so, what claims has Baxter proven are invalid on this basis?

	YES, invalid	NO, not invalid
Claim 1	_____	_____
Claim 7	_____	_____
Claim 8	_____	_____
Claim 9	_____	_____
Claim 10	_____	_____
Claim 12	_____	_____
Claim 15	_____	_____
Claim 16	_____	_____
Claim 17	_____	_____
Claim 18	_____	_____
Claim 19	_____	_____
Claim 20	_____	_____

Go on to the next question.

D. Indefiniteness

Question No. 3(d)

Has Baxter proven by clear and convincing evidence that any asserted claim of the '191 patent is invalid because the claim is indefinite? If so, what claims has Baxter proven are invalid on this basis?

	YES, invalid	NO, not invalid
Claim 1	_____	_____
Claim 7	_____	_____
Claim 8	_____	_____
Claim 9	_____	_____
Claim 10	_____	_____
Claim 12	_____	_____
Claim 15	_____	_____
Claim 16	_____	_____
Claim 17	_____	_____
Claim 18	_____	_____
Claim 19	_____	_____
Claim 20	_____	_____

Go on to the next question.

D. Indefiniteness

Question No. 3(d)

Has Baxter proven by clear and convincing evidence that any asserted claim of the '191 patent is invalid because the claim is indefinite? If so, what claims has Baxter proven are invalid on this basis?

	YES, invalid	NO, not invalid
Claim 1	_____	_____
Claim 7	_____	_____
Claim 8	_____	_____
Claim 9	_____	_____
Claim 10	_____	_____
Claim 12	_____	_____
Claim 15	_____	_____
Claim 16	_____	_____
Claim 17	_____	_____
Claim 18	_____	_____
Claim 19	_____	_____
Claim 20	_____	_____

Go on to the next question.

D. Indefiniteness

Question No. 3(d)

Has Baxter proven by clear and convincing evidence that any asserted claim of the '191 patent is invalid because the claim is indefinite? If so, what claims has Baxter proven are invalid on this basis?

	YES, invalid	NO, not invalid
Claim 1	_____	_____
Claim 7	_____	_____
Claim 8	_____	_____
Claim 9	_____	_____
Claim 10	_____	_____
Claim 12	_____	_____
Claim 15	_____	_____
Claim 16	_____	_____
Claim 17	_____	_____
Claim 18	_____	_____
Claim 19	_____	_____
Claim 20	_____	_____

Go on to the next question.

[4. INEQUITABLE CONDUCT – IF COURT SENDS QUESTION TO THE JURY]

Has Baxter proven by clear and convincing evidence that the inventor or any one of the prosecuting attorneys obtained the '191 patent by intentionally misleading or intentionally withholding information from the Patent Office with knowledge that such information was material to the patentability of the invention:

YES, inequitable conduct _____

NO, no inequitable conduct _____

Go on to the next question.

[4. INEQUITABLE CONDUCT – IF COURT SENDS QUESTION TO THE JURY]

Has Baxter proven by clear and convincing evidence that the inventor or any one of the prosecuting attorneys obtained the '191 patent by intentionally misleading or intentionally withholding information from the Patent Office with knowledge that such information was material to the patentability of the invention:

YES, inequitable conduct _____

NO, no inequitable conduct _____

Go on to the next question.

[4. INEQUITABLE CONDUCT – IF COURT SENDS QUESTION TO THE JURY]

Has Baxter proven by clear and convincing evidence that the inventor or any one of the prosecuting attorneys obtained the '191 patent by intentionally misleading or intentionally withholding information from the Patent Office with knowledge that such information was material to the patentability of the invention:

YES, inequitable conduct _____

NO, no inequitable conduct _____

Go on to the next question.

5. **DAMAGES**

If you have found that Baxter has infringed any claim of the '191 patent ("yes" answer to any part of questions 1(a) or (b) or (c)) and that any one or more of any infringed claims has not been proven invalid ("no" answer to the corresponding parts of questions 3(a) – 3(d)) or the '191 patent has not been proven unenforceable ("no" answer to question 4), please answer the following questions.

Question No. 5(a)

What amount of damages, if any, has Talecris proven it is entitled to receive from Baxter based on sales of GAMMAGARD® LIQUID from September 26, 2005 to the present date?

\$ _____

Question No. 5(b)

What reasonable royalty, if any, has Talecris proven by a preponderance of the evidence?

_____ %

* * *

5. **DAMAGES**

If you have found that Baxter has infringed any claim of the '191 patent ("yes" answer to any part of questions 1(a) or (b) or (c)) and that any one or more of any infringed claims has not been proven invalid ("no" answer to the corresponding parts of questions 3(a) – 3(d)) or the '191 patent has not been proven unenforceable ("no" answer to question 4), please answer the following questions.

Question No. 5(a)

What amount of damages, if any, has Talecris proven it is entitled to receive from Baxter based on sales of GAMMAGARD® LIQUID from September 26, 2005 to the present date?

\$ _____

Question No. 5(b)

What reasonable royalty, if any, has Talecris proven by a preponderance of the evidence?

_____ %

* * *

5. **DAMAGES**

If you have found that Baxter has infringed any claim of the '191 patent ("yes" answer to any part of questions 1(a) or (b) or (c)) and that any one or more of any infringed claims has not been proven invalid ("no" answer to the corresponding parts of questions 3(a) – 3(d)) or the '191 patent has not been proven unenforceable ("no" answer to question 4), please answer the following questions.

Question No. 5(a)

What amount of damages, if any, has Talecris proven it is entitled to receive from Baxter based on sales of GAMMAGARD® LIQUID from September 26, 2005 to the present date?

\$ _____

Question No. 5(b)

What reasonable royalty, if any, has Talecris proven by a preponderance of the evidence?

_____ %

* * *

Each juror must sign this verdict form to reflect that a unanimous decision has been reached.

Dated:

FOREPERSON

Each juror must sign this verdict form to reflect that a unanimous decision has been reached.

Dated:

FOREPERSON

Each juror must sign this verdict form to reflect that a unanimous decision has been reached.

Dated:

FOREPERSON

CERTIFICATE OF SERVICE

I hereby certify on this 14th day of May, 2007 I electronically filed the foregoing **Baxter's Proposed Special Verdict Form** with the Clerk of Court using CM/ECF which will send notification of such filing to the following:

Philip A. Rovner, Esquire Potter Anderson & Corroon LLP Hercules Plaza P. O. Box 951 Wilmington, DE 19899 (302) 984-6140 provner@potteranderson.com	Susan Spaeth, Esquire Townsend and Townsend and Crew LLP 379 Lytton Avenue Palo Alto, CA 94301-1431 (415) 576-0200 smspaeth@townsend.com
---	--

I also hereby certify that a true copy of the foregoing document was served upon the following in the manner indicated on May 14, 2007.

<u>Via Hand Delivery and E-Mail</u> Philip A. Rovner, Esquire Potter Anderson & Corroon LLP Hercules Plaza P. O. Box 951 Wilmington, DE 19899 (302) 984-6140 provner@potteranderson.com	<u>Via Federal Express and E-Mail</u> Susan Spaeth, Esquire Townsend and Townsend and Crew LLP 379 Lytton Avenue Palo Alto, CA 94301-1431 (415) 576-0200 smspaeth@townsend.com
---	--

/s/ Jeffrey B. Bove
Jeffrey B. Bove (#998)
CONNOLLY BOVE LODGE & HUTZ LLP
The Nemours Building
1007 North Orange Street
Wilmington, DE 19801
Telephone: (302) 658-9141
jbove@cblh.com

Attorneys for Talecris Biotherapeutics, Inc. and Bayer Healthcare LLC

CERTIFICATE OF SERVICE

I hereby certify on this 14th day of May, 2007 I electronically filed the foregoing **Baxter's Proposed Special Verdict Form** with the Clerk of Court using CM/ECF which will send notification of such filing to the following:

Philip A. Rovner, Esquire Potter Anderson & Corroon LLP Hercules Plaza P. O. Box 951 Wilmington, DE 19899 (302) 984-6140 provner@potteranderson.com	Susan Spaeth, Esquire Townsend and Townsend and Crew LLP 379 Lytton Avenue Palo Alto, CA 94301-1431 (415) 576-0200 smspaeth@townsend.com
---	--

I also hereby certify that a true copy of the foregoing document was served upon the following in the manner indicated on May 14, 2007.

<u>Via Hand Delivery and E-Mail</u> Philip A. Rovner, Esquire Potter Anderson & Corroon LLP Hercules Plaza P. O. Box 951 Wilmington, DE 19899 (302) 984-6140 provner@potteranderson.com	<u>Via Federal Express and E-Mail</u> Susan Spaeth, Esquire Townsend and Townsend and Crew LLP 379 Lytton Avenue Palo Alto, CA 94301-1431 (415) 576-0200 smspaeth@townsend.com
---	--

/s/ Jeffrey B. Bove
Jeffrey B. Bove (#998)
CONNOLLY BOVE LODGE & HUTZ LLP
The Nemours Building
1007 North Orange Street
Wilmington, DE 19801
Telephone: (302) 658-9141
jbove@cblh.com

Attorneys for Talecris Biotherapeutics, Inc. and Bayer Healthcare LLC

CERTIFICATE OF SERVICE

I hereby certify on this 14th day of May, 2007 I electronically filed the foregoing **Baxter's Proposed Special Verdict Form** with the Clerk of Court using CM/ECF which will send notification of such filing to the following:

Philip A. Rovner, Esquire Potter Anderson & Corroon LLP Hercules Plaza P. O. Box 951 Wilmington, DE 19899 (302) 984-6140 provner@potteranderson.com	Susan Spaeth, Esquire Townsend and Townsend and Crew LLP 379 Lytton Avenue Palo Alto, CA 94301-1431 (415) 576-0200 smspaeth@townsend.com
---	--

I also hereby certify that a true copy of the foregoing document was served upon the following in the manner indicated on May 14, 2007.

<u>Via Hand Delivery and E-Mail</u> Philip A. Rovner, Esquire Potter Anderson & Corroon LLP Hercules Plaza P. O. Box 951 Wilmington, DE 19899 (302) 984-6140 provner@potteranderson.com	<u>Via Federal Express and E-Mail</u> Susan Spaeth, Esquire Townsend and Townsend and Crew LLP 379 Lytton Avenue Palo Alto, CA 94301-1431 (415) 576-0200 smspaeth@townsend.com
---	--

/s/ Jeffrey B. Bove
Jeffrey B. Bove (#998)
CONNOLLY BOVE LODGE & HUTZ LLP
The Nemours Building
1007 North Orange Street
Wilmington, DE 19801
Telephone: (302) 658-9141
jbove@cblh.com

Attorneys for Talecris Biotherapeutics, Inc. and Bayer Healthcare LLC